

## SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25<sup>th</sup> Street, Cheyenne, Wyoming 82002, and Northwest College, 231 West 6<sup>th</sup> Street, Building 1, Powell, Wyoming, 82435, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the alleged violations cited in Notice of Violation Docket Number 5476-14. The Notice of Violation alleged that Northwest College violated the Wyoming Air Quality Standards and Regulations (Air Quality Rules) by failing to perform a pre-renovation asbestos inspection and by failing to notify DEQ/AQD prior to disturbing asbestos-containing material during the renovations to the Oliver building, on Northwest's campus, located at 231 West 6<sup>th</sup> Street in Powell, Wyoming (Oliver Building).

Wyo. Stat. Ann. § 35-11-901(a)(ii) (2013) authorizes stipulated settlement, including payment of a penalty, implementation of compliance schedules, or other settlement conditions in lieu of litigation. To that end, Northwest College and the DEQ/AQD hereby agree as follows:

1. Northwest College is the owner of the Oliver Building.
2. The DEQ/AQD is the executive branch agency of Wyoming government responsible for enforcing the Air Quality Rules.
3. Wyo. Stat. Ann. § 35-11-201 provides, "[n]o person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the [environmental quality] council."
4. Chapter 3, Section 8 of the Air Quality Rules requires all owners and operators of renovation activities that will disturb a certain amount of asbestos-containing material to provide DEQ/AQD with written notice of their intent to renovate, at least ten (10) working days before the commencement of renovation activities. This section further requires all such owners and operators to perform a thorough inspection of the renovation site for the presence of asbestos prior to commencing renovation.
5. On September 29, 2014, a representative of Northwest College telephoned DEQ/AQD Inspector Linda Dewitt. During that conversation, the representative indicated that there was asbestos-containing dust in the Oliver Building.
6. Through subsequent phone calls with Northwest College and the company hired by Northwest College to perform renovations to the Oliver Building, Ms. Dewitt discovered that neither party had performed a thorough asbestos inspection in the renovation area prior to renovation.



7. Samples of the Oliver Building roof contained 5% chrysotile asbestos in a layer of paint on the built-up roof.

8. DEQ/AQD never received, and Northwest College does not claim that they or any other party provided, a Notification of Demolition or Renovation form.

9. On October 7, 2014, DEQ/AQD issued Notice of Violation 5476-14 to Northwest College. The Notice of Violation alleged that Northwest College was in violation of the Air Quality Rules for failing to perform a pre-renovation asbestos inspection and for failing to notify DEQ/AQD prior to disturbing asbestos-containing material during the renovations at the Oliver Building.

10. Without admitting liability, and in lieu of litigation pursuant to Wyo. Stat. Ann. § 35-11-901(a)(ii), Northwest College agrees to pay to the DEQ/AQD the amount of two thousand two hundred seventy-five dollars (\$2,275.00) as a stipulated penalty to resolve the violations alleged in the aforementioned Notice of Violation. Northwest College agrees to make full payment by check made payable to the Wyoming DEQ/AQD, within thirty (30) days after Northwest College has been notified by DEQ/AQD that the final signature has been affixed to this Agreement. Northwest College agrees to mail the payment to Ann Shed, Compliance Program Principal, DEQ/AQD, Herschler Building, 122 West 25<sup>th</sup> Street, Cheyenne, Wyoming 82002.

11. Northwest College, by entering into this Agreement, does not concede or admit any liability, fault, or statutory noncompliance. Except as specifically provided for herein, nothing in this Agreement shall prejudice, waive, or impair any right, remedy, or defense that Northwest College may have against any entity.

12. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Northwest College arising from the allegations contained within the Notice of Violation and this Agreement. In reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against Northwest College for these particular alleged violations. By this Agreement, the Parties intend to resolve with prejudice all allegations that are contained within the Notice of Violation and this Agreement.

13. In the event that Northwest College fails to fulfill its obligations under this Agreement, Northwest College agree to toll any statute of limitation claims that may apply in an enforcement action by the DEQ/AQD involving the specific matters described in the Notice of Violation or otherwise set forth in this Agreement for the period that the statute of limitation of such claim or claims would otherwise have run but for the negotiation and performance of this settlement agreement.

14. This Agreement shall be admissible by either Northwest College or the DEQ/AQD without objection by the other party in any action between DEQ/AQD and Northwest College relating to the violations alleged herein.

15. Each party assumes the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other. Neither DEQ/AQD nor Northwest College shall have any claim against the other for attorneys' fees, or any other costs related to the preparation and resolution of this Agreement.

16. Any changes, modifications, revisions, or amendments to this Agreement are invalid unless mutually agreed upon by both parties, incorporated by written instrument, executed, and signed by all parties to this Agreement.

17. The laws of the State of Wyoming shall govern the construction, interpretation, and enforcement of this Agreement. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

18. This Agreement, consisting of four (4) pages represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

19. The State of Wyoming and the DEQ/AQD do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. Ann. § 1-39-104(a) and all other state law.

20. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The parties to this Agreement intend and expressly agree that only parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.


21. Each party represents that they are authorized to enter into this Agreement, agrees to comply with and to be bound by the terms of this Agreement, and further agrees that they will not contest the basis or validity of this Agreement. This Agreement shall become binding upon the parties once executed.



IN WITNESS THEREOF, the parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

NORTHWEST COLLEGE:

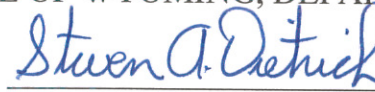
By:

  
Dr. Stefani Hicswa  
President

1/5/15  
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By:

  
Steven A. Dietrich, AQD Administrator

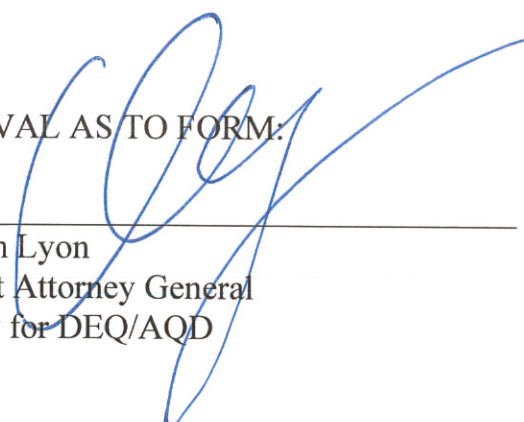
1-12-15  
Date

By:

  
Todd Parfitt, DEQ Director

1/13/15  
Date

APPROVAL AS TO FORM:

  
Elizabeth Lyon  
Assistant Attorney General  
Attorney for DEQ/AQD

1/14/15  
Date